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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2421 OF 2006

Brihanmumbai Electric Supply
& Transport Undertaking (of
Brihan-Mumbai Mahanagarpalika),
through its General Manager,
having office at BEST Bhavan,
BEST Marg, Post Box No. 192,
Mumbai-400 001. ...Petitioner.

Vs.

1. Rahath Silk Mills, proprietary
concern of Mr. Kailash Makharia,
having address at Rahath
Commercial Centre, Globe Mills
Passage, Off.Pandurang Budhkar
Marg, Worli, Mumbai-400 025.

2. The Ombudsman, appointed by
Maharashtra Electricity Regulatory
Commission, having office at
606, 'Keshava', Bandra-Kurla
Complex, Bandra (East),
Mumbai-400 051. ...Respondents.

Mr.Harinder Toor a/w. Ms. Priya Bhargav i/by M/s. Kini & Co. for the petitioner.

Mr. Rajesh Maravoor i/by M/s. Maravoor Wamorkar for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 14TH SEPTEMBER, 2007

JUDGMENT:-

1. The petitioner, being aggrieved by the order dated 14th July, 2005 passed by the Ombudsman, appointed by the Maharashtra Electricity Regulatory Commission (for

short, "MERC") under Section 42(6) of the Electricity Act-2003 (for short, "the Act") filed the present writ petition.

2. The facts underlying are:-

. Respondent No.1 in or about February, 1999 applied to the petitioner for increment in electricity supply for total connected load of about 35 KW for commercial purpose at Commercial (C-2) tariff and removal and substitution of said 4 meters by higher capacity Meters.

3. On 15th March, 1999 the petitioner removed said 4 meters and substituted them by high capacity meter Nos. 0903961 and X950090. The petitioner changed electricity tariff applicable to respondent No.1 from Commercial (C-1) tariff to Commercial (C-2) tariff.

4. On 2nd March, 2000, respondent No.1 by letter dated 2nd March, 2000 addressed to petitioner applied for replacement of Meter Nos. 0903961 and X950090 by an electronic meter.

5. On 7th March, 2000, the petitioner removed and

replaced Meter Nos. 0903961 and X950090 by an Electronic Meter No. P001885.

6. On 17th April, 2003, the petitioner issued Electricity Bill dated 17/04/2003 to respondent No.1.

7. On 2nd February, 2005, respondent No.1 filed complaint No. N-G(S)-8-05 dated 02/02/2005 before Consumer Grievance Redressal Forum of petitioner to dispute liability of respondent No.1 regarding arrears and delayed payment charges adjusted in Electricity Bills under Account/Bill No. 200-011-121.

8. On 15th April, 2005, the CGRF by order dated 15th April, 2005 directed and ordered respondent No.1 to pay to the petitioner amount of Rs.1,76,145=57 within 30 days and also directed the petitioner to reconcile account of respondent No.1 after receipt of payment.

9. The relevant Section 56(2) of the Electricity Act is as under:-

. "Disconnection of supply in default of payment. Notwithstanding anything contained in any other law for the time

being in force, no sum due from any consumer, under this sanction shall be recoverable after the period of two years from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

10. The learned counsel appearing for the appellant strongly relied on **Abdul Nazer Vs. Kerala State Electricity Board & Ors. AIR 2006, KERALA 203**, basically on the following para.

. Legislature never wanted that provision to operate retrospectively. Under such circumstances Board is right in its contention that the amount due from the consumer prior to the coming into force of the Electricity Act, 2003 could be recovered by revenue recovery proceedings since no time limit has been prescribed. Section 56(2) of the Act states that no sum due from any consumer under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity. Section 56(2) in our view is applicable only to amounts due after commencement of this Act. Under such

> circumstances we find no infirmity in Ext. 47 order.

. and submitted that the amendment in Section 56 to the Electricity Act operates prospectively w.e.f. 02/06/2003 and therefore, the amount of energy charges which was due to board prior to coming into force. The said amendment Act is unapplicable on the basis of old unamended provisions. Therefore, the dues are recoverable as no time limit was prescribed earlier to this. The demands, as made for the period in question, are, therefore, proper and correct.

11. In the case of **Abdul Nazer (Supra)** the demand for energy charges were for the period of 1998 to 1999 by notice dated 16/05/2002 prior to the Section 56 of the Electricity Act (36) of 2003. In the present case as stated on affidavit by the respondent that they were receiving regular bills between 07/03/2000 and 01/02/2003 and paid accordingly is not correct, though there were no arrears or additional charges reflected in the said bills. There were demand made at the relevant time from 23/03/1999 to 25/05/2000, lastly dated 17/04/2003, mentioning about the arrears (Exh.A1 to A10, B, C).

12. By the impugned order the authority has considered all these aspects and pass operative order as under:-

"1. Both the meters removed by the respondent on 7th March, 2000 were not tested inspite of the request of the Appellant. There is, therefore, no way to determine the assessment of units at this stage.

2. In view of the above, it is not necessary to deliberate or interfere in the order of the Forum in arriving at the arrears based on the meter readings last available.

3. In view of written and oral submissions made by the Appellant and the respondent, it is clear that the arrears if any, pertain to the period prior to May, 2000 which are not shown at any time during the subsequent bills until April, 2003. Provisions under Section 56(2) of the Electricity Act, 2003 bars recovery of any arrears in such a situation. As such, the amount of arrears shown in the order of the Forum cannot be recovered now by the respondent. The order of the Forum to this extent is therefore set aside being contrary to the provisions under Section 56(2)

of the Act.

4. It is clear that the Appellant has been paying current bills regularly and therefore action of the Respondent in disconnecting the energy supply is illegal in terms of the provisions under Section 56(1) of the Electricity Act,2003. The respondent is directed to restore the supply immediately.

5. The order should be carried out immediately and the compliance reported within one month of this order."

13. However, considering the fact that Act came into force w.e.f. 2nd June, 2003 and the demand was made prior to June, 2003 i.e. on 17/04/2003, the submission as raised by the learned counsel appearing for the respondent, therefore, need to be considered in view of Act 2003 and the Judgment in **Abdul Nazer (Supra).**

14. The demand of arrears of energy bills from 02/06/2003 will be governed by the new Act. However, the arrears, if any, prior to this date and or demand bills issued prior to this date shall govern by the

old Act. In the present case, undisputedly, the demand bills in questions issued and received by the respondents are dated 17/04/2003, issued prior to 02/06/2003. Therefore, the submission as raised by the learned counsel appearing for the petitioner, that the Act of 2003 being of prospective nature, the bar under Section 56(2) as resorted to by both the respondents and or by the authority was incorrect. There is no specific bar created or any savings clause to make the Act of 2003 retrospective. The new Act or such Act comes into effect normally prospectively, unless specifically mentioned or provided otherwise. In the present case, there is no such contra/ specific provision. The petitioner has relied on the Annexure "A" to "C", to demonstrate that the bills are based on the prior cause of action. The demand, therefore as made, is within the framework of law.

15. The resultant order is as under:-

1) The impugned order dated 14th July, 2005 is quashed and set aside.

2) The matter is remanded back for re-hearing before the ombudsman.

3) The learned Authority after giving full opportunity and hearing both the parties, shall pass appropriate order preferably within three months in all respect.

4) The respondent, however, directed to deposit the amount of Rs.1,76, 145.57/- as ordered on 15/04/2005 within 45 days. This will be subject to adjustment by the Ombudsman/ respondent No.2.

5. The petition is allowed in view of the above.

6. No costs.

(ANOOP V.MOHTA, J.)